

**Notice of Allowability**

Application No.

09/845,265

Examiner

Gentle E. Winter

Applicant(s)

SUZUKI ET AL.

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1746

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/10/04.
2. ☒ The allowed claim(s) is/are 1, 3-10, 12, and 13, renumbered as 1-11.
3. ☒ The drawings filed on 01 May 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. The application has been amended as follows:
3. Non-elected claims 14-17 are cancelled. The election has been treated as an election without traverse for the reasons of record.

### ***Claim Rejections - 35 USC § 102—Withdrawn***

1. Claims 1 and 10 were rejected as being unpatentable over Inoue. The rejection is withdrawn. On page 6 applicant states: "Applicant respectfully disagrees with [the examiner's interpretation of this [the Inoue] reference." Applicant then goes to argue a new limitation in the claim. The arguments are relevant in distinguishing the reference from the claims as they now appear. The arguments in conjunction with the amendments are persuasive in distinguishing the currently pending claims from the prior art of record. The reference fails to disclose that the modified styrene includes at least one acrylonitrile unit. This addition overcomes the anticipation rejection. Under different circumstances the claim might have been rejected under 35 U.S.C. § 103, however as was pointed out by applicant the claims are drawn to a fairly specific type of battery, and the components

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are disclosed to be in specific ranges. The language of the ranges is not modified. In view of the teaching of the prior art of record it appears that the claim recites elements that are novel in the context of a non-aqueous electrolyte secondary battery, and further, that while the prior art of record does teach every component, the mere disclosure of claimed elements is not sufficient to support an obviousness type rejection. The claimed combination is not fairly suggested in the aggregated references, as such, the claims are believed allowable over the prior art of record.

***Claim Rejections - 35 USC § 103--Withdrawn***

1. Claim 2-9 and 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Inoue and associated references. Applicant credibly argued that the specific combination claimed was not identified in the prior art of record, rather the prior art of record recited a laundry list and the prior art of record was silent as to why the specifics disclosed would have been selected. It is well settled that it is improper to use applicant's disclosure as a blueprint for piecing together art to make an obviousness rejection. While the aggregated prior art of record does disclose appear to disclose the various components of the invention, the motivation for making the specific combinations that are claimed is apparently lacking.

***Allowable Subject Matter***

2. Claims 1, 3-10, 12, and 13, renumbered as 1-11 are allowed

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3. The following is an examiner's statement of reasons for allowance:

4. The Inoue reference fails to disclose that the modified styrene includes at least on acrylonitrile unit. This addition overcomes the anticipation rejection. Applicant credibly argued that the specific combination claimed was not identified in the prior art of record, rather the prior art of record recited a laundry list and the prior art of record was silent as to why the specifics disclosed would have been selected.

5. For at least the foregoing reasons the claims are believed to be allowable over the prior art of record.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (703) 305-3403. The examiner can normally be reached on Monday-Friday 7:00-3:30.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (703) 308-4333. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

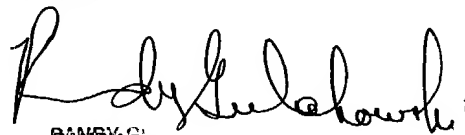
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872-9310 for regular communications and (703) 872-9311 for After Final communications.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gentle E. Winter  
Examiner  
Art Unit 1746

April 2, 2004

  
GENTLE E. WINTER  
SUPERVISORY EXAMINER  
TECHNOLOGY CENTER 1700